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APR 8 9 41 AM '98 Federal Communications Commission FCC 98-63

DISPATCHED Before the
Federal Communications Commission
Washington, D.C. 20554

In re)
MARK A. RABENOLD) CIB Docket No. 98-47
Oroville, Washington)
Order to Show Cause Why a)
Cease and Desist Order Should Not Be Issued)

ORDER TO SHOW CAUSE AND
NOTICE OF OPPORTUNITY FOR HEARING

Adopted: April 2, 1998 Released: April 6, 1998

By the Commission:

1. The Commission has under consideration information concerning the transmission of radio signals without a license by Mark A. Rabenold ("Rabenold"). For the reasons that follow, we order Rabenold to show cause, pursuant to Section 312(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 312(c), why we should not issue a cease and desist order which prohibits further unauthorized transmissions on his part. Also, pursuant to Section 1.80(g) of the Commission's Rules (the "rules"), 47 C.F.R. § 1.80(g), this order constitutes a notice of opportunity for hearing to determine whether, in addition to or as an alternative to the issuance of a cease and desist order, a forfeiture should be imposed for violations of the Act and the rules.

2. **Background.** On August 21, 1997, Michael P. Rothe ("Rothe") and Donald C. Roberson ("Roberson"), employees of the Commission's Compliance and Information Bureau ("CIB") stationed in the Seattle Field Office observed an unauthorized FM broadcast station operating on 105.1 MHz in the Oroville, Washington, area. Using directional finding techniques, they determined that the signals came from an antenna at the back of the building at 1214 Main Street, Oroville. Rothe and Roberson measured the strength of the signal from two locations. At a distance of 103 meters from the antenna, the signal strength was measured at 6.5 mV/m, while, from a slightly different angle and at a distance of 99.3 meters, the signal strength was measured at 5.8 mV/m. Rothe and Roberson calculated that these values are the equivalent of 223,900 µV/m at 3 meters and 180,400 µV/m at 3 meters, respectively, both of which exceed the limit for unlicensed operation in the FM band of 250 µV/m at 3 meters prescribed by Section 15.239 of the rules, 47 C.F.R. § 15.239. Further investigation by Rothe and Roberson appeared to indicate that the operator was Rabenold.

3. That same day, Rothe and Roberson located Rabenold. Rabenold informed them that he would let them inspect the station if they filled out a questionnaire he had prepared. After Rothe and Roberson refused to complete the questionnaire, Rabenold stated he would not let them inspect the station. Rothe and Roberson then handed Rabenold a letter, which advised Rabenold that no license had been issued by the Commission to him for broadcast operations on 105.1 MHz. The letter also stated that:

[O]peration of radio transmitting equipment without a valid radio station authorization

and/or refusal to allow inspection of your radio station constitutes violation of the Federal laws cited above and could subject the owner, operator or anyone aiding and abetting this illegal operation to an **administrative penalty** of monetary forfeiture under Section 503(b) of the Act, 47 U.S.C. § 503(b). . . . **UNLICENSED OPERATION OF THIS RADIO STATION MUST BE DISCONTINUED IMMEDIATELY.** (emphasis in original).

The letter also solicited Rabenold's comments on the matter and advised him that he could request an interview with the Commission to discuss the matter.

4. By certified letter dated September 25, 1997, Dennis J. Anderson ("Anderson"), District Director of the Seattle Field Office, informed Rabenold that Commission agents had determined that he was operating illegally on 105.1 MHz in that the field strength of the signal transmitted by Rabenold exceeded the maximum authorized for operation without a license by Section 15.239(b) of the rules. 47 C.F.R. §15.239(b). Anderson's letter advised Rabenold immediately to cease operating the unlicensed FM radio broadcast station and that operation of a radio transmitter without proper authorization could subject Rabenold to a forfeiture as well as criminal penalties. Anderson's letter requested a reply describing the steps that had been taken to ensure that illegal broadcasts did not recur. Commission records indicate that Rabenold appears to have signed the return receipt but that he did not submit a response. On March 12, 1998, Roberson confirmed that Rabenold's unauthorized transmissions are continuing.

5. **Discussion.** Section 301 of the Act, 47 U.S.C. § 301, provides in pertinent part:

It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State . . . to another place in the same State . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Anyone transmitting radio transmissions in the United States must have authority from the Commission to do so. See U.S. v. Medina, 718 F. Supp. 928 (S.D. Fla. 1989); U.S. v. Weiner, 701 F.Supp. 15 (D.Mass. 1988), aff'd, 887 F.2d 259 (1st Cir. 1989); Stephen Paul Dunifer, 11 FCC Rcd 718, 720-21, ¶¶ 7-9 (1995) (regarding Commission's licensing requirement); and Order to Show Cause and Notice of Apparent Liability, 50 Fed. Reg. 20603, published May 17, 1985 (Alan H. Weiner). As the facts recited above reflect, it appears that Rabenold has violated and may currently be violating Section 301 of the Act.

ORDERING CLAUSES

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 312(c) of the Act, Mark A. Rabenold **IS DIRECTED TO SHOW CAUSE** why he should not be ordered to **CEASE AND DESIST** from violating Section 301 of the Act, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

1. To determine whether Mark A. Rabenold has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.

2. To determine whether, based on the evidence adduced pursuant to the preceding issue, Mark A. Rabenold should be ordered to cease and desist from violating Section 301 of the Act.

7. **IT IS FURTHER ORDERED** that, pursuant to Section 312(d) of the Act, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Compliance and Information Bureau with respect to issues 1 and 2.

8. **IT IS FURTHER ORDERED** that this Order to Show Cause shall constitute a Bill of Particulars with respect to all foregoing issues.

9. **IT IS FURTHER ORDERED** that, to avail himself of the opportunity to be heard, Mark A. Rabenold, pursuant to Sections 1.91(c) of the rules, in person or by attorney, **SHALL FILE** in triplicate with the Commission within twenty (20) days of the mailing of this Order, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in this Order.

10. **IT IS FURTHER ORDERED** that, without regard as to whether the hearing record warrants an order that Mark A. Rabenold cease and desist from violating the Act or the rules, it shall be determined, pursuant to Section 503(b) of the Act, whether an **ORDER FOR FORFEITURE** in an amount not to exceed \$11,000¹ shall be issued against Mark A. Rabenold for the alleged violations of Section 301 of the Act.

11. **IT IS FURTHER ORDERED** that in connection with the possible forfeiture liability noted above, this document constitutes a notice of opportunity for hearing pursuant to Section 503(b) of the Act and Section 1.80 of the rules.

12. **IT IS FURTHER ORDERED** that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order **SHALL BE SERVED** on the counsel of record appearing on behalf of the Chief, Compliance and Information Bureau. Parties may inquire as to the identity of such counsel by calling the Compliance and Information Bureau at (202) 418-1100, TTY (202) 418-2544. Such service **SHALL BE ADDRESSED** to the named counsel of record, Compliance and Information Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

13. **IT IS FURTHER ORDERED** that the Office of Public Affairs, Reference Operations Division of the Commission send a copy of this Order by Certified Mail - Return Receipt Requested to:

Mark A. Rabenold
960 Swanson Mill Road
Tonasket, Washington 98855

¹ This figure reflects the maximum appropriate forfeiture amount in light of the specific facts at issue. See 47 U.S.C. § 503(b)(2)(C); 47 C.F.R. §§ 1.80(b)(3), (b)(4), (b)(5); see also In re the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997)(petitions for reconsideration pending).

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Magalie Roman Salas".

Magalie Roman Salas
Secretary